

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Elizabeth Hopkins	Team: Team # 5	CCRB Case #: 200915199	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 09/18/2009 12:15 AM	Location of Incident: East 111th Street and Park Avenue	Precinct: 23	18 Mo. SOL 3/18/2011	EO SOL 3/18/2011	
Date/Time CV Reported Fri, 09/18/2009 1:08 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Fri, 09/18/2009 1:08 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Christopher Derco	14560	946917	MN IRT
2. An officer			MN IRT
3. POM Johnpaul Pennacchia	09573	948115	MN IRT
4. POM Henry Mancebo	04227	947201	MN IRT
5. POM Francy Monestime	23621	946018	MN IRT
6. Officers			MN IRT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Lydia Figueroa	17881	945718	MN IRT
2. POM Matthew Jagoda	06817	948050	MN IRT
3. SGT Sheila Mccarthy	02030	898004	MN IRT
4. POM Yovanny Santos	04629	948130	MN IRT

Officer(s)	Allegation	Investigator Recommendation
A.POM Christopher Derco	Abuse: PO Christopher Derco stopped the car in which § 87(2)(b) and § 87(2)(b) were occupants.	
B.POM Christopher Derco	Abuse: PO Christopher Derco frisked § 87(2)(b)	
C.POM Henry Mancebo	Abuse: PO Henry Mancebo frisked § 87(2)(b)	
D.POM Francy Monestime	Abuse: PO Francy Monestime searched the car in which § 87(2)(b) was an occupant.	
E.POM Johnpaul Pennacchia	Abuse: PO Johnpaul Pennacchia searched the car in which § 87(2)(b) was an occupant.	
F.POM Johnpaul Pennacchia	Force: PO Johnpaul Pennacchia used physical force against § 87(2)(b)	
G.POM Christopher Derco	Force: PO Christopher Derco struck § 87(2)(b) with an asp.	
H.POM Francy Monestime	Force: PO Francy Monestime struck § 87(2)(b) with an asp.	

Officer(s)	Allegation	Investigator Recommendation
I. Officers	Force: Officers used physical force against § 87(2)(b)	
J. An officer	Abuse: An officer refused to provide his name and shield number to § 87(2)(b)	

## Case Summary

§ 87(2)(b) filed this complaint on the CCRB's call processing system on September 18, 2009 (encl. 4C). On September 18, 2009 at approximately 12:15 a.m., § 87(2)(b) drove with § 87(2)(b) and § 87(2)(b) they were stopped by PO Christopher Derco at East 111<sup>th</sup> Street and Park Avenue, in Manhattan. Other officers from Manhattan North Impact Response Team were also present, and the following allegations resulted:

- **Allegation A – Abuse of Authority:** PO Christopher Derco stopped the car in which § 87(2)(b) and § 87(2)(b) were occupants. § 87(2)(g)
- **Allegation B – Abuse of Authority:** PO Christopher Derco frisked § 87(2)(b)
- **Allegation C – Abuse of Authority:** PO Henry Mancebo frisked § 87(2)(b) § 87(2)(b), § 87(2)(g)
- **Allegation D – Abuse of Authority:** PO Francy Monestime searched the car in which § 87(2)(b) was an occupant. § 87(2)(g)
- **Allegation E – Abuse of Authority:** PO Johnpaul Pennacchia searched the car in which § 87(2)(b) was an occupant. § 87(2)(b), § 87(2)(g)
- **Allegation F – Force:** PO Johnpaul Pennacchia used physical force against § 87(2)(b)
- **Allegation G – Force:** PO Christopher Derco struck § 87(2)(b) with an asp.
- **Allegation H – Force:** PO Francy Monestime struck § 87(2)(b) with an asp. § 87(2)(b), § 87(2)(g)
- **Allegation I – Force:** Officers used physical force against § 87(2)(b) § 87(2)(g)
- **Allegation J – Abuse of Authority:** An officer refused to provide his name and shield number to § 87(2)(b) § 87(2)(g)

## Results of Investigation

### Civilian Statements

**Victim:** § 87(2)(b)

§ 87(2)(b)

### CCRB Statement

§ 87(2)(b) was interviewed at the CCRB on October 27, 2009 (encl. 5A-E). On September 18, 2009 at approximately 12:15 a.m., § 87(2)(b) drove with § 87(2)(b) and § 87(2)(b) in his black Chevy Blazer, which has factory-tinted windows. They intended to drop off § 87(2)(b) in the vicinity of East 109<sup>th</sup> Street and Park Avenue, in Manhattan. § 87(2)(b) stated that he had smoked marijuana, while alone, approximately four to five hours prior to this incident. There

was no marijuana in his car or on his person at the time of incident, and § 87(2)(b) was not aware if § 87(2)(b) had consumed any drugs prior to this incident.

§ 87(2)(b) stopped at a red light at the corner of East 111<sup>th</sup> Street and Park Avenue; he observed ten police officers in uniform standing at the corner. Five officers approached his window; § 87(2)(b) only provided a description of the officer determined through investigation to be PO Christopher Derco, who said that he smelled marijuana, which § 87(2)(b) denied. § 87(2)(b) exited and went to the rear of the vehicle, as instructed, and PO Derco frisked § 87(2)(b) waist, groin, and ankle areas. § 87(2)(b) was frisked by an officer determined through the CCRB investigation to be PO Yovanny Santos. § 87(2)(b) was frisked and searched by three to four officers whom § 87(2)(b) could not describe. § 87(2)(b) also exited the vehicle at the instruction of an officer determined to be PO Lydia Figueroa.

An unidentified white officer who had searched § 87(2)(b) said, “We’ve got a collar,” at which point § 87(2)(b) ran about ten steps past the officers. An unidentified officer punched § 87(2)(b) § 87(2)(b) did not indicate where on his body § 87(2)(b) was punched), and he was grabbed and thrown to the ground by four to five officers whom § 87(2)(b) could only describe as white males in uniform. § 87(2)(b) stated that § 87(2)(b) did not use force against the officers or swing his arms, but he tried to get away by moving his shoulders from side to side. He kicked his feet in the air but did not kick any officers. Officers determined through investigation to be PO Derco and PO Monestime struck § 87(2)(b) with asps in the back of his knees and the arms. An unidentified officer who had his knee in § 87(2)(b)’s back also struck him with his hand in different parts of his body. After § 87(2)(b) was handcuffed, officers continued to strike him. § 87(2)(b) estimated that each officer struck § 87(2)(b) ten times. An unidentified white male officer in his late thirties and described as tall and slim stomped the back of § 87(2)(b)’s head three to four times. About ten to fifteen additional officers arrived and began to use force against § 87(2)(b) could not provide further details in regards to this allegation or further describe these officers but stated that some of the officers were in plainclothes. § 87(2)(b) was beaten up for about fifteen minutes.

§ 87(2)(b) and § 87(2)(b) were put into a marked van. § 87(2)(b) sustained bleeding scrapes to his forehead and knee. An officer whom § 87(2)(b) did not describe got in the front seat of his car and looked in the back seat before driving away from the location. At the stationhouse, § 87(2)(b) stated that he did not want to go to the hospital so that his arrest processing would not be delayed. § 87(2)(b) and § 87(2)(b) were released and § 87(2)(b) was charged with possession of marijuana. He denied that any marijuana was found in his vehicle, but stated that he later learned that § 87(2)(b) had two to three bags of marijuana on his person. On September 19, 2009, § 87(2)(b) informed § 87(2)(b) that he had been to the hospital and was diagnosed with two broken ribs.

On May 21, 2010, § 87(2)(b) appeared at the CCRB for a photographic array (encl. 5F-P). He was presented photographs of ten officers, including seven possible subjects and three filler officers. § 87(2)(b) recognized a photograph of PO Derco and PO Monestime, and indicated that these officers “beat § 87(2)(b) with a nightstick.” § 87(2)(b) recognized a photograph of PO Santos, but could provide no details of his actions on the scene. § 87(2)(b) recognized a photograph of PO Pennacchia, and stated that PO Pennacchia held § 87(2)(b) on the scene. § 87(2)(b) recognized a photograph of PO Kraljevic and stated that PO Kraljevic held him on the sidewalk. § 87(2)(b) did not recognize the photographs of potential subjects PO Peralta or PO Mancebo. § 87(2)(b) stated that he recognized three unidentified filler officers, and indicated that one officer “beat on § 87(2)(b) the other “was there,” although § 87(2)(b) did not elaborate on this officer’s actions at the scene, and the third officer “was at the station[house].”

**Victim:** § 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

### **CCRB Statement**

§ 87(2)(b) was interviewed at the Civilian Complaint Review Board on October 27, 2009 (encl. 6A-F). Her statement was largely similar with that of § 87(2)(b) with the following exceptions. She, § 87(2)(b) and § 87(2)(b) smoked a marijuana cigarette while driving on FDR Drive, and the car smelled of marijuana. § 87(2)(b) was § 87(2)(g) to her knowledge that § 87(2)(b) possessed marijuana, stating both that she knew and did not know that § 87(2)(b) was in possession of marijuana. After they exited the vehicle, two to three unidentified officers whom § 87(2)(b) did not describe began to search inside the car, including inside the glove compartment and center console.

Approximately eight officers struck § 87(2)(b) multiple times with their asps and hands in the back, legs, and head. § 87(2)(b)'s head was banged against the sidewalk by an officer whom § 87(2)(b) could not describe. At some point, officers attempted to pick up § 87(2)(b) by holding underneath his arms while continuing to hit him on the legs and arms. He fell back onto the ground and § 87(2)(b) believed that § 87(2)(b) lost consciousness because he ceased reacting to being beaten. Additional unidentified uniformed officers arrived and struck § 87(2)(b) with asps and hands.

After a few minutes, an officer determined through investigation to be SGT Sheila McCarthy told the officers to get § 87(2)(b) in the van. At the stationhouse, § 87(2)(b) asked for the name and badge number of an unidentified white or Hispanic male officer in his thirties, described as approximately five feet and seven inches tall and with a husky build and a bald head, who had used force against § 87(2)(b) and who was escorting her in to the stationhouse. The officer responded, "You don't need to know that." § 87(2)(b) was later released with a summons for disorderly conduct. § 87(2)(b) was also released.

On May 21, 2010, § 87(2)(b) appeared at the CCRB for a photographic array (encl. 6G-Q). She was presented photographs of ten officers, including seven possible subjects and three filler officers. § 87(2)(b) did not recognize the photographs of potential subjects PO Christopher Derco, PO Jeanpaul Pennacchia, PO Henry Mancebo, PO Yovanny Santos, PO Franci Monestime or PO Mark Kraljevic. She indicated that she "maybe" recognized potential subject officer PO Peralta, as well as an unidentified filler officer, although she did not indicate what PO Peralta or the unknown officer did during this incident.

### **Victim:** § 87(2)(b)

§ 87(2)(b)

### **Telephone Statement**

On December 1, 2009, § 87(2)(b) provided a telephone statement to the CCRB (encl. 7C).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) and § 87(2)(b) smoked marijuana in § 87(2)(b) car prior to being stopped at East 111<sup>th</sup> Street and Park Avenue. Four uniformed officers approached the vehicle and an officer determined through investigation to be PO Henry Mancebo pulled § 87(2)(b) from the vehicle and frisked his entire body. § 87(2)(b) indicated that he was not searched. PO Mancebo found a small bag of marijuana in his pants pockets and said, "There's a collar." § 87(2)(b) ran about thirty feet.

Six to seven officers whom § 87(2)(b) did not describe stopped him and threw him to the floor. Officers struck § 87(2)(b) with asps, kicked him, and dragged him on the street; he received seventeen bruises on the legs, back, and shoulders and scrapes on his forearms. An officer kicked the back of his head, causing him to lose consciousness as his forehead hit the sidewalk. § 87(2)(b) did not indicate that PO Mancebo was involved in this force. At the precinct, § 87(2)(b) saw his arresting officer,

determined through NYPD documentation to be PO Derco, for the first time; § 87(2)(b) indicated that PO Derco had not been at the scene.

§ 87(2)(b) agreed to appear at the CCRB to provide a sworn statement on December 7, 2009, but did not appear for this appointment or contact the CCRB. § 87(2)(b) was contacted via telephone five additional times between December 8, 2009 and May 11, 2010 and was mailed three letters, on October 19, 2009, December 8, 2009, and January 12, 2010, none of which was returned by the United States Postal Service. A search of the NYC Department of Correction's Inmate Look-Up Service, conducted on April 22, 2010, confirmed that § 87(2)(b) was not incarcerated at the time of these contact attempts. § 87(2)(b) did not contact the CCRB.

### **Arrest Photograph**

It is shown on this September 18, 2009 photograph that § 87(2)(b) had a bleeding scrape across his forehead, approximately four inches long, as well as approximately seven scrapes and bruises elsewhere on his face (encl. 7B).

### **Victim:** § 87(2)(b)

On November 19, 2009 § 87(2)(b) provided a telephone statement to the CCRB (encl. 7A) § 87(2)(g) § 87(2)(b) stated that about three minutes prior to being stopped at East 111th Street and Park Avenue, they were smoking marijuana on the FDR Drive. A blunt was thrown out the window on FDR Drive; smoke was visible inside the car and the odor was present when they were stopped.

At East 111<sup>th</sup> Street and Park Avenue, an officer determined through the CCRB investigation to be PO Yovanny Santos approached § 87(2)(b)'s door. § 87(2)(b) stated he did not recall being frisked. Almost immediately, a commotion ensued on the opposite side of the vehicle and an officer determined by the CCRB investigation to be PO Jeanpaul Pennacchia slammed § 87(2)(b) to the ground. Three officers began to hit § 87(2)(b) and two officers struck him with asps a couple of times. § 87(2)(b) was beaten all over and additional officers whom § 87(2)(b) could not describe joined in this force. § 87(2)(b) believed that § 87(2)(b) lost consciousness because he ceased moving. Uniformed and plainclothes officers arrived in vehicles and on foot. A white male officer in his thirties dressed in plainclothes arrived as backup and kicked § 87(2)(b) in the head.

§ 87(2)(b) was unable to schedule an appointment at the time of his telephone statement, and was contacted four times between November 30, 2009 and May 11, 2010. He was mailed two letters, on January 5 and January 12, 2010, neither of which was returned by the United States Postal Service. A search of the NYC Department of Correction's Inmate Look-Up Service, confirmed that § 87(2)(b) is not currently incarcerated. § 87(2)(b) did not contact the CCRB to schedule an appointment.

### **Complainant/Witness:** § 87(2)(b)

On October 13, 2009, § 87(2)(b) provided a telephone statement to the CCRB (encl. 7D). On September 18, 2009 at approximately 12: 15 a.m., § 87(2)(b) was a passenger in a car that came to be at the corner of East 111<sup>th</sup> Street and Park Avenue. A marked van was present and traffic was backed up for three to four minutes. § 87(2)(b) had an unobstructed view of at least five officers swinging around an individual determined through investigation to be § 87(2)(b). Two to three officers punched § 87(2)(b) in the face. § 87(2)(b) blocked his face with his arms. § 87(2)(b) was brought to the ground and an officer kicked him in the face. After he was handcuffed, officers continued to kick § 87(2)(b) in the head and ribs. His face became bloody and there was a lump on his forehead. § 87(2)(b) did not describe any officers whose actions he could specifically recount, but stated that a short white or Hispanic male in his twenties or thirties was on the scene.

§ 87(2)(b) agreed to come in to the CCRB at a later date if the victims were to participate in the investigation. § 87(2)(b) was contacted via telephone six additional times between November 19, 2009

and January 12, 2010. He was mailed two letters, on October 6, 2009 and January 12, 2010, neither of which was returned by the United States Postal Service. § 87(2)(b) did not contact the CCRB.

#### **NYPD Statements:**

##### **Subject Officer: PO CHRISTOPHER DERCO**

- § 87(2)(b)
- On September 18, 2009, PO Derco was assigned to a footpost in the 23<sup>rd</sup> Precinct and was partnered with PO Figueroa. He worked from 5:30 p.m. on September 17, 2009 to 2:05 a.m. on September 18, 2009, and was dressed in uniform.

#### **Memo Book (encl. 8A-B)**

12:29 a.m.: 1 under, 111<sup>th</sup> and Park

12:40 a.m.: 23<sup>rd</sup> Precinct for arrest processing

#### **Stop, Question, and Frisk Reports: § 87(2)(b) and § 87(2)(b) (encl. 8H-K)**

PO Derco reported that § 87(2)(b) was suspected of criminal possession of a controlled substance, and § 87(2)(b) was suspected of criminal sale of a controlled substance. The circumstances leading to the stop of § 87(2)(b) and § 87(2)(b) include their actions indicative of engaging in a drug transaction; furtive movements; a high incidence of reported offense in the area; the correspondence of the time of day and week to criminal activity; evasive, false or inconsistent responses to officer's questions; and a change of direction at the sight of the officer. The reason indicated for frisking § 87(2)(b) and § 87(2)(b) were their furtive movements. A search was conducted of § 87(2)(b) and § 87(2)(b) as incident to lawful arrest. Additionally, it is noted that § 87(2)(b)'s demeanor was visibly nervous and combative. No physical force was used against § 87(2)(b) but the following force was used against § 87(2)(b) hands, batons, positioning the suspect against a wall, and handcuffing.

#### **Arrest Report: § 87(2)(b) (encl. 8C-E)**

The details of § 87(2)(b)'s arrest, as indicated by PO Derco, are: "At the time and place of occurrence, defendant was observed in possession of marijuana in plain view. When arresting/officer attempted to place defendant under arrest, defendant began kicking and flailing, attempting to escape arrest." It is noted that § 87(2)(b) did not use physical force, and that PO Derco used physical force to restrain, control, and remove § 87(2)(b). § 87(2)(b) was charged with resisting arrest and criminal possession of marijuana in the fifth degree.

#### **Arrest Report: § 87(2)(b) (encl. 8F-G)**

The details of § 87(2)(b)'s arrest, as indicated by PO Derco, are: "At the time and place of occurrence, defendant was observed in possession of marijuana in plain view." § 87(2)(b) was charged with criminal possession of marijuana in the fifth degree.

#### **CCRB Statement**

PO Derco was interviewed at the CCRB on January 21, 2010 (encl. 8L-N). On September 18, 2010, as PO Derco was at his footpost with PO Figueroa, his attention was drawn to a truck with illegally tinted windows that had stopped at a red light. PO Pennacchia and officers from his command whom he could not identify stood about half a block away. PO Derco approached the vehicle and shined a light into the window of the vehicle, stating that they were being stopped for illegally tinted windows. PO Derco was able to see that four people were inside of the vehicle but, due to the window tints, was unable to see clearly. PO Figueroa stood by the passenger side window. The driver, § 87(2)(b) rolled the window

down partially but refused to lower it completely, as asked. PO Derco smelled marijuana at this time and indicated as much to the passengers.

PO Derco asked § 87(2)(b) for his license; § 87(2)(b) responded that he did not have to provide this. § 87(2)(b) and the front passenger, identified through CCRB investigation to be § 87(2)(b) reached for something in the center consol and passed it underhanded to those in the back seat. PO Derco believed this to be a fist-sized bag of marijuana because it was a green substance in a bag that frequently packages marijuana. The rear passengers, determined through investigation to be § 87(2)(b) and § 87(2)(b) moved their hands underneath the seat, out of sight of PO Derco. One to two minutes into the stop, and due to their furtive movements, PO Derco and PO Figueroa asked everyone to step out of the car. The passengers were compliant; § 87(2)(b) and § 87(2)(b) went to the back of the vehicle with PO Derco, while the other two passengers were with PO Figueroa.

PO Derco frisked § 87(2)(b) due to his furtive movements and incompliance with PO Derco's requests for identification. PO Derco did not indicate that he feared for his safety or suspected that § 87(2)(b) was armed. PO Pennacchia and four to five unidentified officers arrived around this time. Some of these officers interacted with § 87(2)(b) although PO Derco did not recall their actions. § 87(2)(b) suddenly ran to the right about fifteen feet and came to be near PO Pennacchia, who grabbed him in a bear hug from the front. § 87(2)(b) pulled away from PO Pennacchia and PO Derco attempted to grab him. § 87(2)(b) swung four to five times as though to strike PO Derco and other unidentified officers who approached, and PO Derco made the decision to arrest him. § 87(2)(b) did not strike PO Derco or any other officers and no officers were injured. At some point, § 87(2)(b) was brought to the ground; as the officers attempted to handcuff him, § 87(2)(b) continued to resist, punch, and kick, although he did not strike any officers. PO Derco removed his asp, although he did not recall if this was done before or after § 87(2)(b) was taken to the ground. He struck § 87(2)(b) in the shin an unknown number of times, because he could not get § 87(2)(b) under control any other way. Another officer, determined through the CCRB investigation to be PO Francy Monestime also struck § 87(2)(b) with an asp. PO Derco stated that no officer kicked § 87(2)(b) or struck his head against the ground, and PO Derco was not aware of § 87(2)(b) losing consciousness at any point. PO Derco stated that PO Figueroa was not involved in the force against § 87(2)(b).

An unknown officer had called for backup, which arrived after § 87(2)(b) was handcuffed. PO Derco stated that no force was used against § 87(2)(b) after he was handcuffed. PO Derco did not know which officers arrived although he stated that they were from the 23<sup>rd</sup> Precinct and none of the officers were in plainclothes. SGT McCarthy arrived as § 87(2)(b) was being transported to the van by unknown officers. PO Derco did not indicate that the vehicle was searched. PO Derco and unidentified officers transported the four civilians to the stationhouse. § 87(2)(b) complained of leg pain and had a scrape on his head. PO Derco did not recall if he walked the civilians into the stationhouse and did not recall if any civilians asked for his or any other officers' names or shields.

**Subject Officer: PO JOHNPAUL PENNACCHIA**

- § 87(2)(b)
- *On September 18, 2009, PO Pennacchia was assigned to a footpost and was partnered with PO Santos. He worked from 6:00 p.m. on September 17, 2009 to 2:00 a.m. on September 18, 2009 and was dressed in uniform.*

**Memo Book (encl. 9A-C)**

PO Pennacchia had no memo book entries relevant to this incident.

**CCRB Statement**



PO Pennacchia was interviewed at the CCRB on February 26, 2010 (encl. 9D-E). § 87(2)(g) PO Santos, PO Mancebo, and PO Monestime assisted PO Derco and PO Figueroa in the vehicle stop and possibly conducted frisks, although PO Pennacchia could not provide any other information regarding this. For safety, PO Pennacchia entered the vehicle to turn it off. He did not smell marijuana but stated that the doors had been open. He did not indicate that he searched inside of the vehicle, but noted that his attention was immediately drawn to § 87(2)(b) who began to struggle with the unknown officer(s) frisking him. § 87(2)(b) cursed, waved his hands and swung at the officers as PO Derco, PO Monestime, and PO Mancebo attempted to hold him and restrain his hands. They moved twenty to twenty-five feet during this struggle as § 87(2)(b) tried to run away. At no point did the officers lose physical contact with § 87(2)(b).

PO Pennacchia exited the vehicle and tackled § 87(2)(b) to the ground in order to get him under control. PO Pennacchia handcuffed one hand but § 87(2)(b) refused to submit the other, which he lay on top of while struggling. After three to four minutes of struggle, PO Pennacchia was able to handcuff § 87(2)(b) without the assistance of any other officers. He stated that no other force was used and he did not remove his asp or recall other officers doing so. No officers, including him, kicked or punched § 87(2)(b). PO Santos called for backup and other officers arrived as § 87(2)(b) was being handcuffed. These officers did not interact with § 87(2)(b). As a result of this struggle, PO Pennacchia had some cuts on his right knuckle, but he did not seek medical attention in regards to this injury. PO Pennacchia did not know of any injuries to § 87(2)(b).

**Subject Officer: PO YOVANNY SANTOS**

- § 87(2)(b)
- *PO Santos worked from 5:30 p.m. on September 17, 2009 to 2:05 a.m. on September 18, 2009. He was assigned to a foot post, partnered with PO Pennacchia, and dressed in uniform.*

**Memo Book (encl. 10A-C)**

PO Santos had no memo book entries relevant to this incident.

**CCRB Statement**

PO Santos was interviewed at the CCRB on May 20, 2010 (encl. 10D-E). § 87(2)(g) When the driver rolled down the window, PO Santos smelled and observed marijuana smoke rise out of the window; he feared for his safety due to the odor of marijuana and because vehicle stops are unpredictable.

PO Santos opened the passenger door and asked the individual known to the CCRB investigation to be § 87(2)(b) to step out of the vehicle. He conducted a frisk of § 87(2)(b) because he had reasonable suspicion to believe, and training in the Police Academy that indicated that there was contraband in the vehicle or on the passengers, due to the smoke and odor of marijuana. Before conducting a frisk, he had not observed any marijuana on § 87(2)(b) or in the vehicle. He did not recall if he believed § 87(2)(b) had any weapons. PO Santos did not recall if other officers conducted frisks of other passengers or obtained contraband.

PO Santos heard physical and verbal struggling on the other side of the Jeep, but did not know who spoke or what was said. PO Pennacchia ran around the Jeep, out of the line of sight of PO Santos, who did not gain sight of the struggle. PO Mancebo and PO Monestime were also out of PO Santos' line of sight. PO Santos did not see any officers kick, strike, use asps, or use any force against an individual during this incident. PO Santos called for an additional unit and unknown officers in a sector vehicle from the 23<sup>rd</sup> Precinct arrived. PO Santos did not recall if a search of the vehicle was conducted, or if he or any other officer entered or breached the plane of the vehicle.

**Subject Officer: PO FRANCY MONESTIME**

- § 87(2)(b)
- PO Monestime worked a footpost in the 23<sup>rd</sup> Precinct from 5:30 p.m. on September 17, 2009 to 2:05 a.m. on September 18, 2009. He was partnered with PO Mancebo and was dressed in uniform.

**Memo Book (encl. 11A-C)**

PO Monestime had no memo book entries relevant to this incident.

**CCRB Statement**

PO Monestime was interviewed at the CCRB on March 11, 2010 (encl. 11D-F). § 87(2)(g)

As PO Derco and PO Figueroa conducted a vehicle stop, the driver, known to the investigation to be § 87(2)(b) drove forward about one foot and turned the wheel, leading PO Monestime to believe that § 87(2)(b) would flee when the traffic light changed. An unidentified officer went to the vehicle in front and instructed that driver not to move. When § 87(2)(b) rolled down the window, as instructed by PO Derco, PO Monestime observed a cloud of marijuana smoke arise. After the four passengers exited, PO Monestime entered the vehicle at the rear right door to check for contraband in plain view. He stated that because of the driver's attempt to flee the scene and the vehicle's tinted windows, he decided to check the vehicle for weapons. He was inside of the vehicle for about one minute and did not see anything. He heard a commotion at the rear of the vehicle and PO Mancebo said, "Relax, bro. Relax."

PO Monestime turned to see PO Mancebo conducting a frisk of an individual known to the CCRB investigation to be § 87(2)(b). PO Monestime stepped out of the vehicle and observed § 87(2)(b) turn and flail his arms and throw punches at PO Mancebo. PO Derco and PO Monestime approached as § 87(2)(b) continued to throw punches. PO Pennacchia wrestled § 87(2)(b) to the ground as § 87(2)(b) continued to violently resist, kick, and roll on the ground. PO Monestime did not know if § 87(2)(b) struck any officers. PO Monestime and PO Derco retrieved their asps to assist PO Pennacchia. PO Monestime struck § 87(2)(b) twice in the shins and yelled, "Stop resisting." PO Derco struck § 87(2)(b)'s opposite shin an unknown number of times. After he was struck with the asps, § 87(2)(b) ceased resisting and was handcuffed. PO Monestime did not see any officers punch or strike § 87(2)(b) or strike his head against the ground.

**Witness Officer: PO LYDIA FIGUEROA**

- § 87(2)(b)
- PO Figueroa worked from 5:30 p.m. on September 17, 2009 to 2:05 a.m. on September 18, 2009 at a footpost in the 23<sup>rd</sup> Precinct. She was partnered with PO Derco and was dressed in uniform.

**Memo Book (encl. 12A-B)**

12:10 a.m.: Car stop at 111<sup>th</sup> and Park

12:29 a.m.: One of the guys ran

12:35 a.m.: En route to 23<sup>rd</sup> with 4 bodies. Criminal possession of marijuana in 5<sup>th</sup> degree.

**CCRB Statement**

PO Figueroa was interviewed at the CCRB on February 3, 2010 (encl. 12C-D). § 87(2)(g)

The officers observed smoke inside the vehicle and PO Derco made the decision to approach. § 87(2)(b) and the passengers were compliant with PO Derco's instruction that they lower the windows, and PO Figueroa observed smoke

rise out of the opened windows and smelled the odor of marijuana. PO Figueroa did not recall any officers striking, kicking, or removing their asps during the struggle with § 87(2)(b) PO Figueroa stated that PO Kraljevic and PO Peralta brought the van that transported the arrested individuals to the stationhouse, but indicated that they did not have any further involvement in this incident.

**Subject Officer: PO HENRY MANCEBO**

- § 87(2)(b)
- *PO Mancebo worked at a footpost from 2:30 p.m. on September 17, 2009 to 2:05 a.m. on September 18, 2009. He was partnered with PO Monestime and was dressed in uniform.*

**Memo Book (encl. 13A-C)**

PO Mancebo had no memo book entries relevant to this incident.

**CCRB Statement**

PO Mancebo was interviewed at the CCRB on February 17, 2010 (encl. 13D-E). He indicated that he and PO Monestime were involved in another incident at the time and had no recollection of an incident involving a vehicle stop and arrests on charges of possession of marijuana on September 18, 2009 at approximately 12:15 a.m.

**Witness Officer: SGT SHEILA MCCARTHY**

- § 87(2)(b)
- *SGT McCarthy was the Impact Response Supervisor from 5:15 p.m. on September 17, 2009 to 2:12 a.m. on September 18, 2009. She worked with PO Maroney and PO Reilly, was dressed in uniform, and was assigned a marked van.*

**Memo Book (encl. 14A-C)**

12:20 a.m.: Call for backup at 111 and Park

12:30 a.m.: 4 under, Post 6

**CCRB Statement**

SGT McCarthy was interviewed at the CCRB on March 16, 2010 (encl. 14D-E). SGT McCarthy had no recollection of this incident. She did not recall observing force used against any individuals.

**Witness Officer: PO MATTHEW JAGODA**

- § 87(2)(b)
- *PO Jagoda worked a footpost from 5:15 p.m. on September 17, 2009 to 2:05 a.m. on September 18, 2009. He was partnered with PO Williams and dressed in uniform.*

**Memo Book (encl. 15A-C)**

PO Jagoda had no memo book entries relevant to this incident.

**CCRB Statement**

PO Jagoda was interviewed at the CCRB on March 9, 2010 (encl. 15D-E). PO Jagoda and PO Williams responded to the call for backup but when they arrived, the incident had concluded. Two males and a female were handcuffed and then transported to a police van. PO Jagoda did not observe officers

using force and did not see any officers with their asps out. PO Williams did not interact during this incident.

### **NYPD Documents**

#### **Property Vouchers (encl. 16A-B)**

§ 87(2)(b)'s vouchered property is included six Ziploc bags of marijuana, one sandwich bag of marijuana and \$1,286.00.

#### **Roll Call (encl. 16C-F)**

SGT McCarthy was the impact supervisor of the Manhattan Impact Response Team of the 23<sup>rd</sup> Precinct; she was assigned to vehicle § 87(2)(b) and worked from 5:15 p.m. on September 17, 2009 to 2:12 a.m. on September 18, 2009. The following officers worked from 5:30 p.m. on September 17, 2009 to 2:05 a.m. on September 18, 2009: PO Derco and PO Figueroa were assigned to Park Avenue between East 110<sup>th</sup> Street and East 112<sup>th</sup> Street (post 6); PO Pennacchia and PO Santos were assigned to Madison Avenue between East 110<sup>th</sup> Street and East 112<sup>th</sup> Street (post 8); PO Mancebo and PO Monestime were assigned to Lexington Avenue between East 107<sup>th</sup> Street and East 110<sup>th</sup> Street; PO Jagoda was assigned to Park Avenue between East 107<sup>th</sup> Street and East 110<sup>th</sup> Street.

#### **Stop and Frisk Report Log (encl. 16N)**

In regards to this incident, stop and frisk reports were prepared for the stops of § 87(2)(b) and § 87(2)(b) only.

#### **Summons/Arrest for Incident and Disposition**

- Case numbers § 87(2)(b) for the arrest of § 87(2)(b) and § 87(2)(b) for the arrest of § 87(2)(b) remain open. The next scheduled court date for § 87(2)(b) case is § 87(2)(b) in New York Criminal Court. The next scheduled court date for § 87(2)(b)'s case is § 87(2)(b) (encl. 17A-H)

#### **Status of Civil Proceedings**

- § 87(2)(b) and § 87(2)(b) have not filed a Notice of Claim with the City of New York as of June 3, 2010 with regard to the incident (encl. 18A).

#### **Civilians' Criminal History**

- As of May 28, 2010, Office of Court Administration records reveal no criminal convictions for § 87(2)(b) and § 87(2)(b) (encl. 19A-NN).

§ 87(2)(b)

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#### **Subject Officers' CCRB History**

- PO Derco, PO Pennacchia, and PO Santos have been members of the service for one year and there are no substantiated CCRB allegations against them (encl. 2A-B, 2D)
- PO Monestime has been a member of the service for two years and there are no substantiated CCRB allegations against him (encl. 2C).

### **Conclusion**

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**CCRB Case # 200915199**

### **Identification of Subject Officers**

PO Derco acknowledged that he stopped the vehicle being driven by § 87(2)(b) (allegation A), conducted a frisk of § 87(2)(b) (allegation B), and struck § 87(2)(b) with an asp (allegation G). PO Pennacchia acknowledged that he entered § 87(2)(b) vehicle and used force against § 87(2)(b) (allegations E and F). PO Monestime acknowledged that he entered § 87(2)(b) vehicle and struck § 87(2)(b) with an asp (allegations D and H). Although PO Mancebo indicated that he was not present during this incident, PO Pennacchia, PO Santos, PO Figueroa, and his partner, PO Monestime acknowledged that PO Mancebo was present. PO Monestime further stated that PO Mancebo conducted a frisk of § 87(2)(b) described the officer who frisked him as a black or Hispanic male in his thirties with a medium build, a description that closely matches that of PO Mancebo, and allegation C is therefore being pleaded against him.

All civilians indicated that more than three officers were involved in the use of force against § 87(2)(b) however, the investigation was unable to determine the subjects of this allegation. Because § 87(2)(b) and § 87(2)(b) denied that the officers in the photographic array used force against § 87(2)(b) (other than as covered in allegations F, G, and H), and because § 87(2)(b) did not participate in the investigation, the investigation has been unable to determine the subjects of this complaint. § 87(2)(b) also denied that any of the officers presented in the photographic array were the officer who refused to provide his name and shield to her. Because multiple officers on the scene loosely match the description she provided—a white or Hispanic male in his thirties, standing approximately five feet and seven inches tall and having a husky build and a bald head—the investigation did not determine the subject of this complaint. As such, allegations I and J are pleaded against ‘officers’ and ‘an officer,’ respectively.

### **Allegations Not Pleaded**

Because § 87(2)(b) indicated in his telephone statement that he was not searched, and § 87(2)(b) stated in his telephone statement that he did not recall being frisked, these allegations, raised by § 87(2)(b) are not being pleaded.

### **Investigative Findings and Recommendations**

#### **Allegation A – Abuse of Authority: PO Christopher Derco stopped the car in which § 87(2)(b) and § 87(2)(b) were occupants.**

PO Derco indicated that he conducted a vehicle stop due to the vehicle’s illegally tinted windows. However, neither the UF-250s nor the arrest reports prepared by PO Derco mention tinted windows as a factor in these stops and arrests. Although PO Derco provided an account of observations suggesting that a drug transaction was at hand, these were made after he had already stopped the vehicle. PO Monestime and PO Figueroa reiterated the vehicle had illegal tints. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

#### **Allegation B – Abuse of Authority: PO Christopher Derco frisked § 87(2)(b)**

#### **Allegation C – Abuse of Authority: PO Henry Mancebo frisked § 87(2)(b)**

PO Derco stated that after he approached § 87(2)(b) vehicle, § 87(2)(b) and the front passenger passed what he believed to be a bag of marijuana to the rear passengers. PO Derco also

indicated that § 87(2)(b) was incompliant with his requests for identification. However, neither PO Figueroa, who was present throughout the vehicle stop, nor any other officers recounted that marijuana was passed between passengers, or that § 87(2)(b) was incompliant with PO Derco's instructions. PO Derco indicated that § 87(2)(b) movements, which he described as furtive, as well as § 87(2)(b) incompliance, were the factors motivating this frisk. If PO Derco had observed that § 87(2)(b) possessed marijuana, he would have probable cause to arrest § 87(2)(b) and thereby a frisk would have been warranted. However, PO Derco did not indicate that § 87(2)(b) was under arrest at the time he was frisked.

§ 87(2)(b), § 87(2)(g)

**Allegation D – Abuse of Authority: PO Franci Monestime searched the car in which § 87(2)(b) was an occupant.**

§ 87(2)(b) alleged that two to three officers whom she did not describe entered and searched the vehicle, including the glove compartment and center console. § 87(2)(b) stated that two officers entered and searched the vehicle moments before driving it from the location. PO Monestime indicated that he observed a cloud of marijuana smoke exit the vehicle when the windows were lowered, and acknowledged that he entered the vehicle while the passengers were outside being frisked. According to Kamins' *New York Search & Seizure*, a vehicle search is lawful when an officer smells the distinctive odor of drugs (5-84; 2009 ed. Encl. 1D). § 87(2)(b), § 87(2)(g)

**Allegation E – Abuse of Authority: PO Johnpaul Pennacchia searched the car in which § 87(2)(b) was an occupant.**

§ 87(2)(b) alleged that two to three officers whom she did not describe searched her vehicle, including the glove compartment and center console. According to § 87(2)(b) two officers searched the vehicle just before driving it away. PO Pennacchia did not indicate that he searched the vehicle, but stated that he entered the vehicle early in the incident, as the passengers were being frisked, in order to turn the vehicle off. He noted that this was a safety measure. PO Pennacchia's attention was immediately drawn to the struggle between § 87(2)(b) and officers outside of the vehicle, which he quickly approached. PO Pennacchia indicated that he did not smell the odor of marijuana inside of the vehicle. § 87(2)(b), § 87(2)(g)

**Allegation F – Force: PO Johnpaul Pennacchia used physical force against § 87(2)(b)**

**Allegation G– Force: PO Christopher Derco struck § 87(2)(b) with an asp.**

**Allegation H – Force: PO Franci Monestime struck § 87(2)(b) with an asp.**

According to all accounts, § 87(2)(b) attempted to flee the scene after he was frisked. While the civilians' accounts of the force used against § 87(2)(b) are similar, § 87(2)(b) was the only civilian to indicate that § 87(2)(b) struggled with the officers. He stated that § 87(2)(b) moved his shoulders and kicked his legs, but did not use force, swing his arms, or kick any officers. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)  
[Redacted]  
[Redacted]  
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**Allegation I – Force: Officers used physical force against § 87(2)(b)**

All civilians indicated that more than three officers were involved in the use of force against § 87(2)(b). According to § 87(2)(b) an independent witness, § 87(2)(b) was kicked and punched in the face and kicked again after he was handcuffed. § 87(2)(b) and § 87(2)(b) reiterated that officers continued to use force against § 87(2)(b) after he was handcuffed, and that officers arrived as backup and joined in the force against § 87(2)(b) and § 87(2)(b) alleged that an officer in plainclothes kicked § 87(2)(b) in the head.

PO Derco, PO Monestime, and PO Pennacchia denied that they or any officer kicked or punched § 87(2)(b) or struck his head against the ground and denied that any force was used against § 87(2)(b) after he was handcuffed. They indicated that other unknown officers arrived, but denied that any officers were in plainclothes and denied that any officers other than themselves used force against § 87(2)(b).  
§ 87(2)(b), § 87(2)(g)  
[Redacted]  
[Redacted]  
[Redacted]

**Allegation J – Abuse of Authority: An officer refused to provide his name and shield number to**

§ 87(2)(b) alleged that an officer refused to provide his name and shield number upon her request. PO Mancebo, PO Santos, and PO Pennacchia loosely match the description she provided, but these officers indicated that they were not present at the stationhouse at the time of the allegation's occurrence. § 87(2)(b), § 87(2)(g)  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

Team: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature Print Date

Supervisor: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_

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